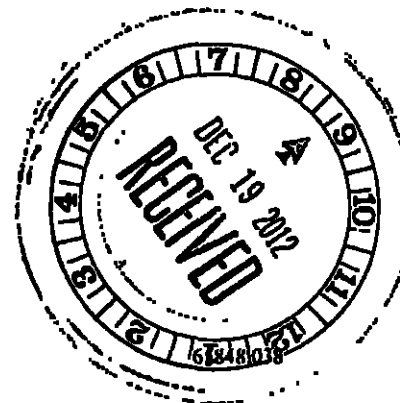


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December 14, 2012

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Via U.S. MailENTERED  
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Ms. Cynthia Brown  
Chief, Section of Administration  
Surface Transportation Board  
395 F. Street, S.W.  
Washington, DC 20423-0001

Re: . Norfolk Southern Railway Company -- Petition for Declaratory Order  
Finance Docket No. F'D35701

Dear Ms. Brown:

On behalf of Norfolk Southern Railway Company, I am providing this letter to update the Board on recent developments related to the above-referenced matter.

As stated in Norfolk Southern's initial Petition, it "demurred" to the 18 state court claims filed in the Roanoke County Circuit Court on the ground that, *inter alia*, the claims were barred by the preemption provision of the Interstate Commerce Commission Termination Act ("ICCTA"). A "demurrer" is comparable to a motion to dismiss for failure to state a claim, and it assumes all facts alleged in a complaint are true. Norfolk Southern noticed a hearing on its demurrer in one of the 18 cases (Richard and Barbara Schilling v. Appalachian Power Company and Norfolk Southern Railway Company, Case No.: CL11-001047-00) for October 29, 2012. In the initial hearing on the demurrer, Judge Richard P. Dougherty questioned why the matter had not been brought before the Surface Transportation Board in light of the expertise of the Board in dealing with such issues. In light of these comments, Norfolk Southern filed the above-referenced Petition, and then filed with the Circuit Court of Roanoke County a motion to stay its consideration of the ICCTA preemption defense.

The parties appeared before the Court on Monday, December 10, to argue the motion to stay and demurrer in the Schilling case. By this time, the case had been transferred to Judge Clifford R. Weckstein, who denied Norfolk Southern's motion to stay, and proceeded to consider oral argument.

I-11406273

Reply to Norfolk Office

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Ms. Cynthia Brown  
December 14, 2012  
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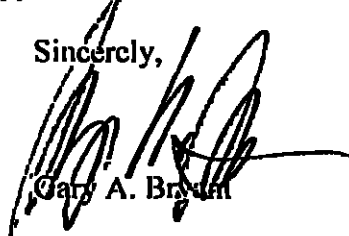
Judge Weckstein overruled Norfolk Southern's demurrer based on ICCTA preemption. As the Judge ruled from the bench and we do not yet have the transcript, we cannot quote the precise language used in the ruling. Judge Weckstein noted, however, that in a demurrer proceeding, the Court is obliged to accept the allegations of the complaint as true, and to give the plaintiff all reasonable inferences. It may be that the Court overruled the demurrer based on the allegation in paragraph 18 that the Railroad "failed to engage in lawful condemnation procedures to allow the owners to receive just compensation for the damage and/or taking that the rail line caused to their property . . ." While we argued that the facts, as alleged, could not state a cause of action for a "taking" in violation of the Fifth Amendment of the United States Constitution, Judge Weckstein may have concluded that the allegation of a taking, standing alone, was sufficient to overcome the demurrer.

That said, the Court clearly did not grant the demurrer as to the "damages" claim alleged in the complaint, and deny the demurrer as to any "takings" claim. Judge Weckstein overruled the demurrer in its entirety, without making any distinction between claims arising out of a "taking" in violation of the Fifth Amendment to the United States Constitution, and claims alleging inverse condemnation "damages" available under Virginia law.

However, Norfolk Southern intends to raise ICCTA preemption in the remaining 17 cases. Accordingly, the ICCTA preemption issue as presented to the Board in the above-referenced Petition continues to be alive.

Norfolk Southern is providing a copy of this letter to counsel for all interested parties.

Sincerely,



Gary A. Brown

GAB:sm

cc: John M. Scheib, Esq. (Via U.S. Mail)  
C. Richard Cranwell, Esq. (Via U.S. Mail)  
Henry E. Howell, III, Esq. (Via U.S. Mail)